


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FILED

APR 29 1980

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY  CLERK

RE:)
)
PLAN FOR PROMPT DISPOSITION OF) GENERAL ORDER NO. 92
CRIMINAL CASES PURSUANT TO)
SPEEDY TRIAL ACT OF 1974)
_____)


The time limits and procedures set forth herein shall become effective upon approval of the reviewing panel designated in accordance with 18 U.S.C. § 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. § 3162 and reflected in sections 10(a) and (c) of this plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the plan that was in effect at the time of such arrest or service.

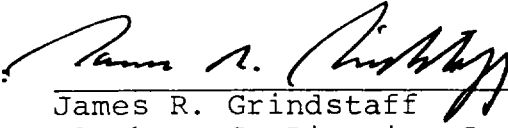
If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section 5 shall be computed from that date.

Dated: April 29, 1980.


PHILIP C. WILKINS
CHIEF UNITED STATES DISTRICT JUDGE

Approved by The Judicial Council of the Ninth Circuit on
June 13, 1980.

Attest: 
James R. Grindstaff
Clerk, U.S. District Court
Eastern District of California

SECTION I
INTRODUCTORY MATERIAL

A. The Plan for Prompt Disposition of Criminal Cases in the United States District Court for the Eastern District of California, including the time limits set forth in Section II hereof, developed and recommended by the Speedy Trial Planning Group, has been approved and adopted by the Court on April 29, 1980 subject to approval as required by 18 U.S.C. § 3165(c).

B. The Speedy Trial Planning Group for the Eastern District of California which proposed this Plan was comprised of the following individuals:

Chief Judge Philip C. Wilkins, Chairman
Judge M.D. Crocker
Judge Lawrence K. Karlton
Judge Milton L. Schwartz
Judge Edward Dean Price
Alan D. Christensen, United States Magistrate
Esther Mix, United States Magistrate
John F. Douville, Chief Probation Officer
James R. Grindstaff, Clerk of the Court
Robert P. LaRoche, United States Marshal
Professor John Bilyeu Oakley, Reporter
Forrest A. Plant, Esq.
William B. Shubb, Esq.

Herman Sillas, United States Attorney

E. Richard Walker, Federal Defender

C. Copies of the Plan shall be made available for public inspection at the Office of the Clerk, United States District Court for the Eastern District of California at Sacramento, California, and Fresno, California. A copy of Section II shall be made available to practicing members of the Bar.

**PLAN FOR PROMPT DISPOSITION
OF CRIMINAL CASES PURSUANT
TO SPEEDY TRIAL ACT OF 1974**

**GENERAL ORDER No. 92
(As Amended by General Order No. 231)**

SECTION II

Section I and III to VIII [Omitted] Copies shall be made available for public inspection at the Office of the Clerk. Section II shall be made available to practicing members of the Bar

SECTION II

STATEMENT OF TIME LIMITS ADOPTED BY THE
COURT AND PROCEDURES FOR IMPLEMENTING THEM

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. §§ 3161-3174), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the Eastern District of California have adopted the time limits and procedures set forth below as sections 1 through 13 of Section II of this Plan, in order to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

1. Applicability

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this Court, including cases triable by United States magistrates, except for petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. [See 18 U.S.C. § 3172.]

(b) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant"

includes such persons unless the context indicates otherwise.

(c) Definitions. A "judicial officer" is either a judge or a magistrate. The term "Court" includes any United States judge or magistrate assigned to the Eastern District of California. "Excludable time" means any period of delay set forth in 18 U.S.C. § 3161(h).

2. Priorities in Scheduling Criminal Cases

Preference shall be given to criminal proceedings as far as practicable, in accordance with Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in subsection 5 should be given preference over other criminal cases. [See 18 U.S.C. § 3164(a).]

3. Time Within Which an Indictment or Information Must Be Filed

(a) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service [See 18 U.S.C. § 3161(b).]

(b) Measurement of Time Periods. If a person has not been arrested or served with a summons on a Federal

charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(c) Related Procedures.

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

4. Time Within Which Trial Must Commence

(a) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this district;

(2) The date on which a sealed indictment or information is unsealed; or

(3) The date of the defendant's first appearance before a judicial officer of this district.

[See 18 U.S.C. § 3161(c)(1).]

(b) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. [See 18 U.S.C. §§ 3161(d)(2); 3161(e).]

(c) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw the plea, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. [See 18 U.S.C. § 3161(1).]

(d) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to

the subsequent charge shall be determined as follows:

(1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. [See 18 U.S.C. § 3161(d).]

(2) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. [See 18 U.S.C. § 3161(h)(6).]

(3) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge. [See 18 U.S.C. § 3161(h)(6).]

(4) If the subsequent charge is contained in a complaint, the time within which an indictment or information must be obtained on the charge shall be

determined without regard to the existence of the original indictment or information.

(e) Measurement of Time Periods. For the purposes of this section:

(1) If a defendant signs a written consent to be tried before a magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(2) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the clerk.

(3) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(4) A trial in a non-jury case shall be deemed

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to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(f) Related Procedures.

(1) At the time of the defendant's earliest appearance before a judicial officer of this district, the office shall take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(2) The Court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case shall be set for trial on a date certain. [See 18 U.S.C. § 3161(a).]

(3) Individual calendars shall be managed so that absent unusual circumstances every criminal case set for trial is reached within five (5) court days of the date originally set. A conflict in schedules of Assistant United States Attorneys shall not be ground for a continuance or a delay in the setting of a trial date except under circumstances approved by the Court and called to the Court's attention at the earliest practicable time. It is the duty of the United States Attorney to be familiar with the scheduling procedures of each judicial

officer and to assign or reassign cases in such manner that the government will be ready for trial on the date set pursuant to subparagraph (2) above.

(4) The Chief Judge of the District shall have the ultimate responsibility for determining whether certain cases need to be reassigned in order to comply with the time requirements of this Plan.

(5) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit specified above in paragraph (d) of this subsection, unless the Court makes a finding on the record that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(6) At the time of the filing of a complaint, indictment, or information such as described in subparagraph (5) above, the United States Attorney shall give written notice to the Court of that circumstance and of the government's position with respect to the computation of the time limits set forth in this Plan.

(7) All pretrial hearings shall be conducted as soon after the arraignment as is possible consistently

with the priorities of other matters on the Court's criminal docket.

(8) The date first set for trial pursuant to subparagraph (2) of this paragraph shall not thereafter be changed to a date more than five days later, or to a date which does not comply with the limits set by this Plan for the time within which trial must commence, without the Court having made a determination on the record as provided in section 6 of this Plan as to whether excludable time has accrued or is accruing in the case, or whether a continuance is justified under 18 U.S.C. § 3161(h)(8). If the Court determines that no excludable time has accrued, it shall so rule on the record; if the Court determines that excludable time has accrued, or is accruing, it shall state on the record the amount of excludable time which has been found to have accrued.

(i) Any new trial date set pursuant to this subparagraph shall be within the limits set by this Plan for the time within which trial must commence, as adjusted to reflect any excludable time determined by the Court to have accrued or which will accrue by virtue of the granting of a continuance under 18 U.S.C. § 3161(h)(8).

(ii) If excludable time is accruing at the time of the Court's granting of a continuance, and

the date the accrual of excludable time will cease cannot then be determined, the Court shall grant an indefinite continuance and it shall be the duty of the United States Attorney to move for a trial date to be set as soon as the accrual of excludable time appears to have ceased. At the time a trial date is then set, the Court shall make a determination on the record as to the amount of excludable time which has theretofore accrued.

5. Defendants in Custody and High-Risk Defendants*

(a) Time Limits. Notwithstanding any longer time periods that may be permitted under sections 3 and 4, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(2) The trial of a high-risk defendant

*If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n.24 (1978).

shall commence within 90 days of the designation as high-risk.

[See 18 U.S.C. § 3164(b).]

(b) Definition of "High-Risk Defendant."

A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(c) Measurement of Time Periods. For the purposes of this section:

(1) A defendant is deemed to be in detention awaiting trial when he is arrested on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(2) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(3) A trial shall be deemed to commence as provided in sections 4(e)(3) and 4(e)(4).

(d) Related Procedures.

(1) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of the beginning of such custody.

(2) The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by him to be high risk.

(3) If the court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

6. Computation of Excludable Time

(a) Applicability. In computing any time limit under sections 3, 4, or 5 herein, the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period before commencement of trial under

section 7.

(b) Procedures for Determination of Excludable Time.

(1) Determinations concerning excludable time shall be made on the record by the Court. Counsel shall have five days from the date of the order in which to object to such a determination of the amount of excludable time. It is the duty of all counsel appearing in this Court to assist the Court in accurately determining and classifying the accrual of excludable time.

(2) The Court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(3) When a defendant is released on bond

in another district for the purpose of returning to this district, said defendant shall appear on the date set by the Court in this district. At the time of such appearance, the Court shall note the dates of arrest, indictment, removal order, and any other significant event, and a determination as to the amount of excludable time shall be made forthwith, providing, however, that before a determination of excludable time is made the defendant shall have had the opportunity to consult with counsel and counsel shall have been given the opportunity to be heard on the matter.

(i) If the defendant appears without counsel, counsel shall be appointed, where appropriate. The case shall be set over to a date certain for a preliminary hearing if the defendant has not previously been indicted or had a preliminary hearing therein. If the defendant has previously been indicted or had a preliminary hearing therein, the case shall be set over to a date certain for arraignment.

(ii) If the defendant appears with counsel, the defendant shall be arraigned at that time if the defendant has previously been indicted or had a preliminary hearing therein. If the defendant has not previously been indicted or had a preliminary hearing therein, the case shall be set over to a date certain for a preliminary

hearing.

(4) In any removal of a defendant under Rule 40 of the Federal Rules of Criminal Procedure, from this district to another, the Court before signing the warrant of removal shall make a determination on the record of the amount of excludable time accrued from the time of arrest to the time of the signing of the warrant of removal.

(5) When a defendant is returned to this district in custody, said defendant shall be brought immediately before a judicial officer. The dates of arrest, indictment, removal order and any other significant event shall be noted by the officer, and a determination as to the amount of excludable time shall be made forthwith, providing however, that before a determination of excludable time is made the defendant shall have had the opportunity to consult with counsel and counsel shall have been given the opportunity to be heard on the matter.

(i) If the defendant appears without counsel, counsel shall be appointed, where appropriate. The case shall be set over to a date certain for a preliminary hearing if the defendant has not previously been indicted or had a preliminary hearing therein, the case shall be set over to a date certain for arraignment.

(ii) If the defendant appears with counsel,

the defendant shall be arraigned at that time if the defendant has previously been indicted or had a preliminary hearing therein. If the defendant has not previously been indicted or had a preliminary hearing therein, the case shall be set over to a date certain for a preliminary hearing.

(c) Pre-Indictment Procedures.

(1) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section 3 hereof, the United States Attorney may file a written motion with the Court for a determination of excludable time or for a continuance under 18 U.S.C. § 3161(h)(8). The Court shall not grant such a motion until counsel for the defendant, whenever practicable, has been given the opportunity to be heard on the matter.

(2) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(3) The Court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(d) Records of Excludable Time.

(1) The clerk of the Court shall enter on the docket information with respect to any periods of excludable time as to each defendant which have been determined on the record by the Court. The clerk of the Court shall also enter on the docket any other information of record pertaining to excludable time.

(2) Any and all documents and records prepared or maintained by the clerk relating to excludable time shall be for information purposes only and shall not constitute evidence that such excludable time has occurred where in fact no determination has been made

by a judicial officer in the manner prescribed by paragraph (b) of this section.

7. Minimum Period for Defense Preparation

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. For the purposes of this section the acceptance of a plea of guilty or nolo contendere does not constitute the commencement of trial. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section 4(d), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. [See 18 U.S.C. § 3161(c)(2); § 3162(2).]

8. Time Within Which Defendant Should be Sentenced

(a) Time Limit. A defendant shall ordinarily be sentenced within 75 days of conviction or the entering of a plea of guilty or nolo contendere.

(b) Related Procedures. If the defendant and defendant's counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

9. Juvenile Proceedings

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. §5036.

(b). Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. §5037(c).

10. Sanctions.

(a) Dismissal. The failure of the government or the Court to comply with the requirements of Title I of the Speedy Trial Act of 1974, 18 U.S.C. §3161 et seq., may entitle the defendant involved to dismissal of the charges against said defendant. Nothing in this plan shall be construed to require that a case be dismissed

in circumstances in which dismissal is not required by statute or the Interstate Agreement on Detainers. In particular, it should be noted that the time period for sentencing set in section 8 herein is a statement of this district's voluntarily assumed goal, and is not required or enforced by the Speedy Trial Act of 1974.

(b) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under Chapter 207 of Title 18, U.S.C., to ensure that he shall appear at trial as required. [See 18 U.S.C. § 3164(c).]

(c) Discipline of Attorneys. In a case in which counsel for the government or any defendant (i) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (ii) knowingly files a frivolous motion solely for the purpose of delay; (iii) makes a statement for the purpose of obtaining a continuance with knowledge that the statement is false and is material

to the granting of the continuance, or (iv) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161 and this Plan, the Court may punish such counsel as provided in 18 U.S.C. §§ 3162(b) and (c).

(d) Alleged Juvenile Delinquents. An alleged delinquent in detention pending trial whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 is entitled pursuant to that section to dismissal of the information against such person unless the United States Attorney shows that the delay was consented to or caused by the juvenile and the juvenile's counsel, or is in the interest of justice in the particular case.

11. Persons Serving Terms of Imprisonment

If the United States Attorney knows that a person charged with an offense in this district is serving a term of imprisonment in any penal institution, the United States Attorney shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. § 3161(j).

12. Monitoring Compliance With Time Limits

(a) As part of its continuing study of the administration of criminal justice in this district, the district's Speedy Trial Planning Group shall pay

special attention to those cases in which there is a failure to comply with time limits set forth herein. From time to time, the Group may make appropriate recommendations to prevent repetition of failures.

(b) In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts and by this Plan, including paragraph (c) of this section, the clerk will from time to time report to the other members of the Speedy Trial Planning Group the circumstances of each case in which there has been a determination by a judicial officer of a failure to comply with any time limit set forth herein, and of each case in which it appears to the clerk from facts of record that such a failure has occurred although no judicial determination of non-compliance has been made. Said report shall include any order or opinion which sets forth such a determination of non-compliance by a judicial officer, together with any order or opinion imposing a sanction for non-compliance.

(c) The clerk shall be prepared to provide promptly upon request of the Circuit Executive sufficient information on the status of all criminal cases in this district to permit the Circuit Executive to ascertain this district's degree of compliance with this Plan and the Speedy Trial Act of 1974.

13. Effective Dates

(a) The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's plan does more than merely reflect the amendments, the revised plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. § 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. § 3162 and reflected in sections 10(a) and (c) of this plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(b) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the plan that was in effect at the time of such arrest or service.

(c) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

(d) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section 5 shall be computed from that date.

END

OF SECTION II

SECTION III

SUMMARY OF EXPERIENCE UNDER THE ACT WITHIN THE DISTRICT

A. Progress toward meeting the permanent time limits

The various segments of Table 1 of Section VIII of this Plan show excellent progress in meeting the Act's standards. The 30-day limit on the period between arrest or service of summons and indictment or information has been in effect under prior Plans since July 1976, and full compliance was achieved in the latter half of 1979. Although statutory sanctions were postponed, the district achieved 91.3 percent compliance with the 70-day time-to-trial period. No cases were subject to sanctions during the interval between July 1, 1979, and the amendment of the Act. For calendar 1979 the district's voluntary 45-day goal for sentencing was met in over 85 percent of cases.

B. Problems Encountered

As discussed in the prior Plan, judicial understaffing is the primary problem of the district. The complement of active judges in the district has since been doubled from three to six;* as new judicial personnel are appointed to these seats and gain experience

*There is currently one vacancy on the court.

in criminal litigation, full compliance with the Speedy Trial Act will be possible so long as there continues to be a high rate of non-trial dispositions.

C. Incidence of requests or allowances of extensions of time beyond district standards

None.

D. Reasons for cases not in compliance with Act
Judicial understaffing, especially in the district's Fresno operations, and lack of experience with the Plan's record-keeping procedures.

E. Effect of the Act on criminal justice administration

The Act as presently modified serves the interest of justice. The full complement of judges is necessary for the Act to work properly in this district in terms of a proper balance between criminal and civil litigation. The United States Attorney believes that the effect of the Act on criminal justice administration is adverse and that in the interest of justice the Act should be repealed. Dissatisfaction with the Act was an important factor in the district's decision not to attempt to implement the Act's sanctions in advance of July 1, 1980.

F. Effect of the Act on civil litigation

Adverse so long as the district lacks its

full complement of judges. The backlog of civil cases fell in 1978 only because of a short-term drop in filings. Filings returned to normal in 1979 and the backlog increased by nearly 18 percent. Concern over the civil docket, combined with continued understaffing of judges, was also an important factor in the district's decision not to accelerate the effective date of sanctions.

G. Frequency of use of sanctions under § 3164

None since prior Plan.

SECTION IV
CHANGES IN PRACTICES AND PROCEDURES
THAT HAVE BEEN OR WILL BE
ADOPTED BY THE DISTRICT COURT TO EXPEDITE
THE DISPOSITION OF CRIMINAL CASES IN
ACCORDANCE WITH 18 U.S.C. § 3167(b)

Nothing to report since prior Plan.

SECTION V
ADDITIONAL RESOURCES NEEDED TO ACHIEVE
COMPLIANCE WITH THE PERMANENT TIME LIMITS

The district's complement of judges has been increased as requested in the prior Plan. Not all seats have been filled, however, and no additional support staff has been obtained. The district has acquired COURTRAN facilities, and COURTRAN docketing is being phased in.

SECTION VI
RECOMMENDATIONS FOR LEGISLATIVE AND PROCEDURAL CHANGES

None at this time pending further experience under the Act as amended. In the view of the United States Attorney, the Act should be repealed or at least modified to allow its provisions to be waived by agreement of counsel.

SECTION VII
INCIDENCE AND LENGTH OF, REASONS FOR,
AND REMEDIES FOR DETENTION PRIOR TO TRIAL

As reported in the prior Plan, pretrial detention is not a major problem in this district. In the year ending June 30, 1979, only 39 percent of defendants were detained prior to trial. This was the lowest of any district in California, and was well below the Circuit average of 46.7 percent.

DISTRICT

CALIFORNIA, EASTERN

SPEEDY TRIAL DATA ANALYSIS (18 U.S.C. 3166(c)(1))

PROCESSING TIME

Processing time for defendants whose cases were terminated during one year period January 1, 1979 through December 31, 1979

TABLE
1NO. OF
DEFENDANTS
TERMINATEDSUBDIVIDED
BY WHEN
INTERVAL
BEGANINTERVAL
ONE
(ARREST
TO
INDICT-
MENT)

HOW LONG IT TOOK TO BRING INDICTMENTS ON CRIMINAL DEFENDANTS

NUMBER OF *NET DAYS THAT ELAPSED TO INDICTMENT OR INFORMATION FROM ARREST OR SERVICE OF SUMMONS

	SAME DAY		1 to 30 days		31 to 35 days		36 to 45 days		46 to 60 days		61 to 90 days		91 to 120 days		121 days & over	
	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%
Before 1 July '79	23	13.0	148	83.6	1	0.6	1	0.6	2	1.1	1	0.6	1	0.6	-	-
On/After 1 July '79	16	29.6	38	70.4	-	-	-	-	-	-	-	-	-	-	-	-
	177															

SUBDIVIDED
BY WHEN
INTERVAL
BEGANINTERVAL
TWO
(INDICT-
MENT TO
TRIAL)

HOW LONG IT TOOK TO BRING CRIMINAL DEFENDANTS# TO TRIAL

Number of *Net Days that Elapsed to Commencement of Trial (or other disposition) from Indictment or (if later) First Appearance

	SAME DAY		1 to 30 days		31 to 70 days		71 to 80 days		81 to 100 days		101 to 120 days		121 to 180 days		181 days & over	
	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%	NO. DEF'S	%
Before 1 July '79	15	4.3	64	18.2	163	46.4	15	4.3	25	7.1	11	3.1	21	6.0	37	10.5
On/After 1 July '79	22	23.9	28	30.4	34	37.0	4	4.3	-	-	2	2.2	2	2.2	-	-
	351															

FOR ALL
PERSONS
TERMINATED &
SENTENCED
DURING THE
12 MOS. PERIOD

HOW LONG IT TOOK TO SENTENCE CRIMINAL DEFENDANTS

NUMBER OF DAYS TO SENTENCE DATE FROM DATE OF CONVICTION

	SAME DAY		1 to 30		31 to 45		46 to 60		61 & over	
	NO. DEF'S	%	NO.	%	NO.	%	NO.	%	No.	%
	115	31.9	92	25.5	100	27.7	24	6.6	30	8.3

*NET MEANS GROSS DAYS, LESS DAYS OF EXCLUDABLE

THESE FIGURES DO NOT INCLUDE DEFENDANTS WHO BEGAN THE INTERVAL DURING

DEFENDANT FIGURES DO NOT INCLUDE PETTY OFFENDERS AND ALSO DO NOT INCLUDE

INCIDENCE OF AND
REASONS FOR DELAYDISTRICT
CALIFORNIA, EASTERNREPORT PERIOD
X 6 Months
(July thru Dec '79)

TOTALS

**TERMINATED DEFENDANTS
REPORTED DURING PERIOD

187

DEFENDANTS

110

WITHOUT EXCLUDABLE TIME

DEFENDANTS
WITH EXCLUDABLE TIME

77

INCIDENTS
OF EXCLUDABLE TIME

116

LENGTH OF EXCLUDABLE DELAY PERIOD (NO. OF DAYS)

CODE	# REASON Under 18 USC 3161	0 to 10 days	11 to 21	22 to 42	43 to 84	85 to 120	121 + days	NO. OF DAYS	ONE	TWO
A	Examination or hearing for mental or physical incapacity—(h)(1)(A).	0	2	4	1	1	0	8	1	7
B	NARA examination—(h)(1)(B).	0	0	0	0	0	0	0	0	0
C	State or federal trials on other charges—(h)(1)(D).	1	1	1	1	1	0	5	0	5
D	Interlocutory appeals—(h)(1)(E).	2	4	0	0	0	1	7	0	7
E	Motions (from filing to hearing or prompt disposition)—(h)(1)(f).	3	7	3	1	0	0	14	0	14
F	Transfers from other districts (per FRCP rules 20, 21 & 40)—(h)(1)(G).	0	1	1	1	1	1	5	0	5
G	Motion is actually under advisement—(h)(1)(J).	2	4	1	0	0	0	7	0	7
H	Misc. proceedings: probation or parole revocation, deportation, extradition—(h)(1).	0	0	0	0	0	0	0	0	0
I	Transportation from another district or to/from examination or hospitalization in ten days or less—(h)(1)(H).	0	0	0	0	0	0	0	0	0
J	Consideration by court of proposed plea agreement—(h)(1)(I).	0	1	6	2	0	0	9	0	9
K	Prosecution deferred by mutual agreement—(h)(2).	0	0	0	0	0	2	2	0	2
L	Unavailability of defendant or essential witness—(h)(3)(A & B).	1	1	1	4	0	7	14	0	14
M	Period of mental or physical incompetence of defendant to stand trial—(h)(4).	1	0	1	1	0	1	4	0	4
N	Period of NARA commitment or treatment—(h)(1)(C) & (E).	0	0	0	0	0	0	0	0	0
O	Superseding indictment and/or new charges—(h)(6).	0	0	0	0	0	0	0	0	0
P	Defendant awaiting trial of co-defendant when no severance had been granted—(h)(7).	0	3	0	0	0	1	4	0	4
Q	if more than one reason or none of reasons below T given in support (A & B)	3	3	10	5	3	9	33	0	33
R	T1 Failure to continue would stop further proceedings T2 or result in miscarriage (B)(i).	0	1	0	0	0	0	1	0	1
S	T2 Case unusual or complex (B)(ii)	0	0	0	0	0	0	0	0	0
T	T3 30 days (B)(iii)	0	0	0	0	0	0	0	0	0
U	T4 Continuance granted in order to obtain or substitute counsel, or give major time to prepare	1	1	0	0	0	0	2	0	2
V	Time up to withdrawal of guilty plea—3161(i).	0	0	0	0	1	0	1	0	1
W	Grand jury indictment time extended 30 more days—3161(b)	0	0	0	0	0	0	0	0	0
X	More than 1 exclusion with days aggregated	0	0	0	0	0	0	0	0	0
TOTAL		14	29	28	16	7	22	116	1	115

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SPEEDY TRIAL DATA ANALYSIS

INCIDENCE OF AND REASONS FOR DELAY

During July 1, 1978 thru June 30, 1979

TOTALS FOR
CALIFORNIA, EASTERN

**TERMINATED DEFENDANTS
REPORTED DURING PERIOD

495 (A) 357 (B) 138 (C) 176 (D)

DEFENDANTS WITHOUT EXCLUDABLE TIME

DEFENDANTS WITH EXCLUDABLE TIME

INCIDENTS OF EXCLUDABLE TIME

LENGTH OF EXCLUDABLE DELAY PERIOD (NO. OF DAYS)

1 to 10 days	11 to 21	22 to 42	43 to 84	85 to 120	121 + days
0	4	6	5	2	2
0	0	0	0	0	0
3	2	3	0	1	6
0	0	2	0	0	1
5	0	0	0	0	0
1	2	3	2	2	2
9	6	4	3	0	0
0	0	0	0	0	0
0	0	0	0	0	7
2	6	5	7	2	6
1	0	0	5	1	2
0	0	0	0	0	0
0	0	0	0	0	0
0	0	0	1	0	0
3	3	15	9	2	22
0	0	1	0	0	0
0	0	0	0	0	0
24	23	39	32	10	48

TOTALS

***REASON**

Under 18 USC 3161

- A. Examination or hearing for mental or physical incapacity—(H)(1)(A)
- B. NARA examination—(H)(1)(B)
- C. State or federal trials on other charges—(H)(1)(C)
- D. Interlocutory appeals—(H)(1)(D)
- E. Hearings on pretrial motions—(H)(1)(E)
- F. Transfers from other districts (per FRCP rules 20, 21 & 40). (H)(1)(F)
- G. Motion is actually under advisement. (H)(1)(G)
- H. Misc. proceedings: probation or parole revocation, deportation, extradition. (H)(1)
- I. Prosecution deferred by mutual agreement. (H)(2)
- M. Unavailability (includes fugitive) of defendant or essential witness. (H)(3)(A)(B)
- N. Period of mental or physical incompetence of defendant to stand trial. (H)(4)
- O. Period of NARA commitment or treatment. (H)(5)
- P. Superseding indictment and/or new charges. (H)(6)
- R. Defendant awaiting trial of co-defendant when no severance has been granted. (H)(7)
- T. Continuances granted in the ends of justice. (H)(8)
- U. Time up to withdrawal of guilty plea (i)
- W. Grand jury indictment time extended 30 more days. (B)

***INTERVAL IN WHICH
EXCLUDABLE DELAY
OCCURRED

ONE	TWO	THREE
0	1	18
0	0	0
0	4	11
0	0	3
0	0	5
0	11	1
1	1	20
0	0	0
0	0	7
0	13	15
0	2	7
0	0	0
0	0	1
0	0	54
0	0	1
0	0	0
1	32	143

%
OF "D"

10.8
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8.5
1.7
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6.8
12.5
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4.0
15.9
5.1
0
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30.7
0.6
0
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SUB
TOTALS
OF "D"

*Paragraph and subsection of 18 USC 3161, Speedy Trial Act of 1974, are shown with reason for delay below

**DEFENDANT FIGURES DO NOT INCLUDE Juveniles, Appeals from U.S. Magistrate decisions, Rule 20 transfers out of district, pretrial diversion dispositions, removals from State courts and any petty offense proceeded by information.

***Interval one: Arrest to indictment; Interval two: Indictment to Arraignment; Interval three: Arraignment to Trial.

DISTRICT

CALIFORNIA, EASTERN

SPEEDY TRIAL DATA ANALYSIS 3166(b)(6) & (c)(6)

TABLE
3

PRETRIAL DETENTION

REPORT { 6 MONTHS - 1 JULY '79
PERIOD { THRU 31 DECEMBER '79

NUMBER OF
DEFENDANTS

A
187

%
OF
A

TOTAL NO. OF DEFENDANTS DISPOSED
OF DURING PERIOD OF REPORT

CASES
CLOSED
DURING
REPORT
PERIOD

DEFENDANTS
DETAINED

B
106

DEFENDANTS DETAINED AFTER INITIAL
APPEARANCE BEFORE A JUDGE OR
MAGISTRATE FOR PERIODS OF
CUSTODY TIME NOT SUBJECT
TO EXCLUSIONS PER 3161(h)

DEFENDANTS GROUPED BY LENGTH OF NET* TIME
IN CONTINUOUS DETENTION STATUS

NUMBER OF DETAINEES

% OF BOX B

NUMBER OF NET DAYS					
1 to 10	11 to 30	31 to 90	91 to 120	121 to 150	151 Plus
32	24	50	0	0	0

30.2 % 22.6 % 47.2 % .0 % .0 % .0 %

*"NET" IS GROSS TIME LESS EXCLUSIONS PER 3161(h).
REPORT SHOULD INCLUDE ONLY DEFENDANTS HAVING
NON-EXCLUDABLE ("NET") DETENTION TIME, WHEN
DEFENDANT HAS MORE THAN ONE SUCH DETENTION
PERIOD, INTERSPERSED WITH RELEASE TIME OR
EXCLUDABLE TIME, DO NOT AGGREGATE THE
SEPARATE DETENTION PERIODS. TAKE THE DEFEN-
DANTS LONGEST SINGLE PERIOD OF "NON EXCLUD-
ABLE" DETENTION AS THE BASIS FOR DETERMINING
WHICH ONE OF THE ABOVE COLUMNS TO PUT HIM IN.

DISTRICT

CALIFORNIA, EASTERN

REPORT { ONE YEAR PERIOD
PERIOD { 1 JAN 1979 THROUGH 31 DECEMBER 1979

SPEEDY TRIAL DATA ANALYSIS 3166(c)(4) & (5)

CRIMINAL DISPOSITIONS

TABLE
4

A
NUMBER
OF DE-
FENDANTS
DISPOSED
OF

378

	B TOTAL NOT CON- VICTED	NOT CONVICTED		ACQUITTED AT TRIAL	
		% OF B	TOTAL NO. DIS- MISSED	% OF B	JURY
11.4	43	90.7	39	9.3	4

	C TOTAL CON- VICTED	CONVICTED		CONVICTED AT TRIAL	
		% OF C	CONVICTED by PLEA PLEA of GUILTY or NOLO CON.	% OF C	JURY
88.6	335	90.1	302	9.9	27

TABLE 5 - MATTERS ON HAND AT START OF PERIOD (COLUMN A)

<u>AGENCY</u>	<u>AMOUNT</u>
Farmers Home Administration	1
Forest Service	4
Air Force	6
Army	1
Social Security Administration	1
Fish & Wildlife	6
National Park Service	32
Drug Enforcement Administration	15
FBI	238
INS	53
Justice	1
Post Office	24
Customs	1
IRS	10
ATF	6
Secret Service	27
GSA - Public Bldg. Service	<u>1</u>
TOTAL	429

TABLE 5 - MATTERS RECEIVED (COLUMN B)

<u>AGENCY</u>	<u>AMOUNT</u>
Farmers Home Administration	1
Forest Service	18
Agriculture	4
Air Force	4
Army	2
Navy	11
All Other Defense	1
Social Security Administration	14
HEW - Miscellaneous	4
Fish and Wildlife	12
Indian Affairs	1
National Park Service	65
DEA	89
FBI	286
INS	105
Justice (All Other)	8
Post Office	37
State (All Other)	2
Transportation (Federal Highway Admin.)	3
Customs	4
IRS	35
ATF	9
IRS (All Other)	3
Secret Service	108

COLUMN B - CONTINUED

Treasury (All Other)	1
GSA	3
Federal Housing Administration	2
HUD	1
Interstate Commerce Commission	<u>1</u>
TOTAL	837

LIST OF MATTERS DECLINED OR DISMISSED BY U.S. ATTORNEY
(COLUMNS C, D, E, F)

<u>AGENCY</u>	<u>AMOUNT</u>
Farmers Home Administration	1
Forest Service	4
Agriculture (All Other)	2
Air Force	2
Navy	1
Social Security Administration	3
HEW (All Other)	3
Fish & Wildlife	2
National Park Service	7
DEA	2
FBI	30
INS	1
Justice (All Other)	1
Post Office	9
IRS	4
ATF	1
Secret Service	10
Treasury (All Other)	1
General Services Administration	<u>1</u>
TOTAL	85

OTHER DISPOSITION (COLUMN G)

<u>AGENCY</u>	<u>AMOUNT</u>
Forest Service	2
Air Force	1
Army	1
Navy	1
Fish & Wildlife	4
National Park Service	10
DEA	9
FBI	60
INS	36
Justice (All Other)	1
Post Office	1
IRS	1
ATF	1
Secret Service	7
General Services Administration	<u>2</u>
TOTAL	140

PROSECUTIONS INITIATED (COLUMN H)

<u>AGENCY</u>	<u>AMOUNT</u>
Forest Service	4
Soil Conservation Service	2
Air Force	1
Navy	1
Social Security Administration	6
Fish & Wildlife	9
National Park Service	43
DEA	76
FBI	138
INS	50
Justice (All Other)	4
Post Office	22
Federal Highway Administration	1
Customs	1
IRS	24
ATF	4
Treasury (Other Interanl Revenue)	1
Secret Service	77
Housing & Urban Development (All Other)	1
Interstate Commerce Commission	<u>1</u>
TOTAL	467

MATTERS ON HAND (COLUMN I)

<u>AGENCY</u>	<u>AMOUNT</u>
Farmers Home Administration	1
Forest Service	12
Air Force	6
Army	2
Navy	8
All Other Defense	1
Social Security Administration	6
HEW (All Other)	1
Fish & Wildlife	3
Indian Affairs Bureau	1
National Park Service	37
DEA	17
FBI	297
INS	71
Justice (All Other)	3
Post Office	29
State (All Other)	2
Federal Highway Administration	2
Customs	4
IRS	16
ATF	9
Treasury (Other Internal Revenue)	2
Secret Service	41
Public Building Service	1
Federal Housing Administration	<u>2</u>
TOTAL	575

DISTRICT

CALIFORNIA, EASTERN

REPORT PERIOD {
 COMPARISON OF TWO CALENDAR
 YEARS: 1 JAN THROUGH 31 DEC 1978,
 AND 1 JAN THROUGH 31 DEC 1979.

SPEEDY TRIAL DATA ANALYSIS 3167(b)(6)

TABLE
6

STATUS OF CIVIL CALENDAR

	NUMBER OF CIVIL CASES			PERCENTAGE INCREASE OR DECREASE
	PENDING AT START OF REPORT PERIOD	FILED DURING REPORT PERIOD	PENDING AT END OF REPORT PERIOD	
1978	(1) 1,569	(2) 953	(3) 1,421	(4) -9.4
1979	1,421	1,392	1,670	17.5

LENGTH OF TIME CASES IN COLUMN 3 ABOVE HAVE BEEN PENDING					
Under 3 Mos	3 to 6 Mos	6 to 12 Mos	12 to 18 Mos	18 to 24 Mos	24 Mos & Over
203	168	273	200	163	414
399	235	325	183	147	381

1978

1979

Gen. Ind. 72

(a) Time Limit. A defendant shall ordinarily be sentenced within 45 days of conviction or the entering of a plea of guilty or nolo contendere.

(b) Related Procedures. If the defendant and defendant's counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

9. Juvenile Proceedings

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(b) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

10. Sanctions

(a) Dismissal. The failure of the government or the Court to comply with the requirements of Title I of the Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq., may entitle the defendant involved to dismissal of the charges against said defendant. Nothing in this plan shall be construed to require that a case be dismissed

Amended by Nos 226 & 231